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(ii) An affidavit certifying that the agreement is valid under all applicable laws; and

(iii) Each corporation's corporate authorization to execute the indemnity agreement.

(5) If your third-party guarantor or another party bound by the indemnity agreement is a partnership, joint venture, or syndicate, the indemnity agreement must:

(i) Bind each partner or party who has a beneficial interest in your guarantor; and

(ii) Provide that, upon demand by the Regional Director under your third-party guarantee, each partner is jointly and severally liable for compliance with all terms and conditions of your lease.

(6) When forfeiture is called for under § 256.59 of this part, the indemnity agreement must provide that your guarantor will either:

(i) Bring your lease into compliance; or

(ii) Provide, within 7 calendar days, sufficient funds to permit the Regional Director to complete corrective action.

(7) The indemnity agreement must contain a confession of judgment. It must provide that, if the Regional Director determines that you, your operator, or an operating rights owner is in default of the lease, the guarantor:

(i) Will not challenge the determination; and

(ii) Will remedy the default.

(8) Each indemnity agreement is deemed to contain all terms and conditions contained in this paragraph (e), even if the guarantor has omitted them.

[62 FR 27957, May 22, 1997]

§ 256.58 Termination of the period of liability and cancellation of a bond.

This section defines the terms and conditions under which MMS will terminate the period of liability of a bond or cancel a bond. Terminating the period of liability of a bond ends the period during which obligations continue to accrue but does not relieve the surety of the responsibility for obligations that accrued during the period of liability. Canceling a bond relieves the surety of all liability. The liabilities that accrue during a period of liability

include obligations that started to accrue prior to the beginning of the period of liability and had not been met and obligations that begin accruing during the period of liability.

(a) When the surety under your bond requests termination:

(1) The Regional Director will terminate the period of liability under your bond within 90 days after MMS receives the request; and

(2) If you intend to continue operations, or have not met all end of lease obligations, you must provide a replacement bond of an equivalent amount.

(b) If you provide a replacement bond, the Regional Director will cancel your previous bond and the surety that provided your previous bond will not retain any liability, provided that:

(1) The new bond is equal to or greater than the bond that was terminated, or you provide an alternative form of security, and the Regional Director determines that the alternative form of security provides a level of security equal to or greater than that provided for by the bond that was terminated;

(2) For a base bond submitted under § 256.52(a) or under § 256.53(a) or (b), the surety issuing the new bond agrees to assume all outstanding liabilities that accrued during the period of liability that was terminated; and

(3) For supplemental bonds submitted under § 256.53(d), the surety issuing the new supplemental bond agrees to assume that portion of the outstanding liabilities that accrued during the period of liability which was terminated and that the Regional Director determines may exceed the coverage of the base bond, and of which the Regional Director notifies the provider of the bond.

(c) This paragraph applies if the period of liability is terminated for a bond but the bond is not replaced by a bond of an equivalent amount. The surety that provided your terminated bond will continue to be responsible for accrued obligations:

(1) Until the obligations are satisfied; and

(2) For additional periods of time in accordance with paragraph (d) of this section.

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(d) When your lease expires or is terminated, the surety that issued a bond will continue to be responsible, and the

Regional Director will retain other forms of security as shown in the following table:

For the following type of bond	The period of liability will end	Your bond will be cancelled . . .
(1) Base bonds submitted under § 256.52(a), § 256.53(a), or (b).	When the Regional Director determines that you have met all of your obligations under the lease.	Seven years after the termination of the lease, 6 years after completion of all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligation, whichever is the latest. The Regional Director will reduce the amount of your bond or return a portion of your security if the Regional Director determines that you need less than the full amount of the base bond to meet any possible future problems.
(2) Supplemental bonds submitted under § 256.53(d).	When the Regional Director determines that you have met all your obligations covered by the supplemental bond.	When you meet your bonded obligations, unless the Regional Director: (i) Determines that the future potential liability resulting from any undetected problems is greater than the amount of the base bond; and (ii) Notifies the provider of the bond that the Regional Director will wait 7 years before cancelling all or a part of the bond (or longer period as necessary to complete any appeals or judicial litigation related to your bonding obligation).

(e) For all bonds, the Regional Director may reinstate your bond as if no cancellation or release had occurred if:

(1) A person makes a payment under the lease and the payment is rescinded or must be repaid by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) The responsible party represents to MMS that it has discharged its obligations under the lease, and the representation was materially false when the bond was canceled or released.

[66 FR 60150, Dec. 3, 2001]

§ 256.59 Forfeiture of bonds and/or other securities.

This section explains how a bond or other security may be forfeited.

(a) The Regional Director will call for forfeiture of all or part of the bond, other form of security, or guarantee you provide under this part if:

(1) You (the party who provided the bond) refuse, or the Regional Director determines that you are unable, to comply with any term or condition of your lease; or

(2) You default under one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of security.

(b) The Regional Director may pursue forfeiture of your bond without first making demands for performance against any lessee, operating rights

owner, or other person authorized to perform lease obligations.

(c) The Regional Director will:

(1) Notify you, the surety on your bond or other form of security, and any third-party guarantor, of his/her determination to call for forfeiture of the bond, security, or guarantee under this section.

(i) This notice will be in writing and will provide the reasons for the forfeiture and the amount to be forfeited.

(ii) The Regional Director must base the amount he/she determines is forfeited upon his/her estimate of the total cost of corrective action to bring your lease into compliance.

(2) Advise you, your third-party guarantor, and any surety, that you, your guarantor, and any surety may avoid forfeiture if, within 5 working days:

(i) You agree to, and demonstrate that you will, bring your lease into compliance within the timeframe that the Regional Director prescribes;

(ii) Your third-party guarantor agrees to, and demonstrates that it will, complete the corrective action to bring your lease into compliance within the timeframe that the Regional Director prescribes; or

(iii) Your surety agrees to, and demonstrates that it will, bring your lease into compliance within the timeframe that the Regional Director prescribes, even if the cost of compliance exceeds the face amount of the bond or other surety instrument.